Saskatchewan
Justice

Alternative Measures Policies

Community Services Branch
April 2005

Table of Contents

Preface i

Introduction 1

Legislation 4

Policy Guidelines 6

Saskatchewan Justice Alternative Measures Policy 7

Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy 11

Saskatchewan Environment Enforcement Bulletin – Alternative Measures 17

Federal Alternative and Extrajudicial Measures Policy 21

Preface

The federal and provincial governments have developed policies and guidelines regarding the use of alternative measures and the development of alternative measures programs. This booklet introduces the concept of alternative measures and provides the legislation and policies that govern the use of alternative measures in Saskatchewan.

Outline of this Booklet

The Introduction briefly describes the types of alternative measures that are commonly used in Saskatchewan.

Section 2 outlines provisions in the *Criminal Code* and the *Youth Criminal Justice Act* that authorize the provinces to develop alternative measures programs and extrajudicial sanctions programs.

Section 3 provides the Ministerial Orders and policies that authorize alternative measures programs. These include:

- The Ministerial Order and attached Saskatchewan Justice Alternative Measures Policy (2004), which guide alternative measures programs for adults;
- The Ministerial Order and attached Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy (2004), which guide extrajudicial sanctions programs for youths;
- The Saskatchewan Environment Enforcement Bulletin - Alternative Measures (2004), which guides conservation officers in making referrals to alternative measures programs; and
- The federal Alternative and Extrajudicial Measures Policy, which guides the actions of federal prosecutors. The federal policy is taken from the Federal Prosecution Service Deskbook at http://canada.justice.gc.ca/en/dept/pub/fps/fpd/ch14.html#14_9_4. The version which has been used in preparing this policy booklet was last updated on April 22, 2004. Please note that this policy booklet does not contain the Appendices from the federal Alternative and Extrajudicial Measures Policy. For additional material, please see the Justice Canada website.

Preface

The Role of Community Services Branch

Community Services Branch is responsible for supporting community-based justice programs by assisting with community development and the community-based approach to justice. The mission of the Branch is: *"We collaborate with and support communities to develop their capacity to deliver culturally sensitive justice services which promote community owned responses to crime, encourage family participation, meet the needs of victims and hold offenders accountable and fosters positive change."*

In this capacity, the Community Services Branch offers developmental assistance and ongoing support for community justice and alternative measures programs. The Branch offers services such as advice regarding program development and operations, consultation with other agencies and organizations, policy and research support, and referrals to other agencies or departments.

The programs that are supported by the Community Services Branch may also receive funding from Justice Canada and Saskatchewan Corrections and Public Safety. These organizations have important roles to play in delivering alternative measures and extrajudicial sanctions.

For more information about the work of the Community Services Branch or the material in this booklet, please feel free to contact us at:

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Section 1: Introduction

"Alternative measures" refers to programs in which adults who are accused of a criminal offence take responsibility for their behavior by participating in a community-based program. These programs attempt to balance the needs of victims, the accused, and their communities while ensuring that society is protected. They offer accused persons a chance to take responsibility for their behavior and to address the harm they have committed.

Alternative measures are a way to address crime in conjunction with the criminal justice system. These programs address the criminal actions of the accused while preserving their dignity and requiring them to be accountable for their behavior. It attempts to make things right by taking a problem-solving approach to crime which emphasizes forgiveness and healing while helping to repair relationships between the victim, the accused and the community. They are consistent with the move towards a responsive justice system that tries to deal with criminal behavior in a proactive manner. They aim to:

- increase the offender's accountability and responsibility for criminal actions;
- promote the involvement of victims in the process;
- protect society by deterring accused persons from further criminal behavior;
- enhance the community's participation in resolving conflicts;
- involve the community in addressing the crime; and
- protect the interests of society.

There are many types of alternative measures. Some of the most common types include:

- victim-offender mediation, in which victims and accused meet with a trained mediator who assists in resolving the conflict. Mediation may involve surrogate victims if the real victim is unable or unwilling to participate;
- mediation circles, in which the victim, the accused and members of the community meet to work out an agreement that satisfies the victim, meets the needs of the accused, and gives members of the community a role in helping both parties; and

- diversion, in which offenders are referred to counseling, educational programs, addictions treatment, or other programs that may help them deal with personal issues.

The development of alternative measures has been influenced by several factors, including:

- the restorative justice movement;
- the desire of Aboriginal people for a justice system that is responsive to their unique needs; and
- the realization that communities can sometimes deliver a more effective form of justice than the criminal justice system.

Adult alternative measures programs are similar to youth extrajudicial sanctions programs. Formerly called youth alternative measures, programs providing these services for youth have been operating in Canada since 1983 and in Saskatchewan since 1985. Both adult and youth programs in Saskatchewan are delivered by community-based agencies.

Alternative measures programs acknowledge the need for effective, efficient ways of resolving disputes that meet the unique needs of Aboriginal people. Accordingly, alternative measures programs involve communities in developing culturally sensitive services that promote healing and reconciliation between victims, offenders, and communities.

In 1995, Government implemented the restorative justice strategy for Saskatchewan. This strategy includes the following goals:

- enhancing community safety and protection;
- reserving the formal justice system for the most serious of matters;
- developing alternative measures for less serious crime;
- strengthening communities by involving victims, offenders, government and community members in a balanced approach to criminal behavior;
- reducing crime by increasing offender accountability to victims and communities; and
- increasing public trust and public perception of the fairness of the criminal justice system.

Government also implemented the restorative youth justice strategy. The goals of this strategy are to:

- enhance public understanding about the incidence and nature of crimes committed by youth;
- minimize the involvement of young people in the formal justice system;
- recognize the critical role of Aboriginal people in delivering services; and
- more effectively use the judicial process for cases involving young offenders.

The goals of the restorative justice strategy and the restorative youth justice strategy are also consistent with Saskatchewan's Aboriginal Justice Strategy (1995), which aims to involve the Aboriginal community in developing justice initiatives that are culturally sensitive, responsive to community needs, holistic in service provision, and focus on empowering the community. These objectives will be achieved by focusing on crime prevention, crime reduction, improving race relations, and building bridges within the justice system.

Section 2: Legislation

In September, 1996, a number of amendments were made to the *Criminal Code*. Bill C-41 authorized the use of community-based sentencing alternatives and emphasized that incarceration should be used as a last resort. The use of alternative measures is authorized in section 717 (1) of the *Criminal Code*, which states,

717. (1). Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

(a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;

(b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;

(c) the person, having been informed of alternative measures, fully and freely consents to participate therein;

(d) the person has, before consenting to participate in alternative measures, been advised of the right to be represented by counsel;

(e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;

(f) there is, in the opinion of the Attorney General or the Attorney General's agency, sufficient evidence to proceed with the prosecution of the offence; and

(g) the prosecution of the offence is not in any way barred at law.

(2)Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have any charge against the person dealt with by the court.

A similar provision respecting young offenders is found in Section 10 of the *Youth Criminal Justice Act*, which states,

Extrajudicial sanctions

10. (1) An extrajudicial sanction may be used to deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral mentioned in section 6, 7 or 8 because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.

Section 2: Legislation

Conditions
(2) An extrajudicial sanction may be used only if
(*a*) it is part of a program of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;
(*b*) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society;
(*c*) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subject to it;
(*d*) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
(*e*) the young person accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed;
(*f*) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and
(*g*) the prosecution of the offence is not in any way barred at law.

Restriction on use
(3) An extrajudicial sanction may not be used in respect of a young person who
(*a*) denies participation or involvement in the commission of the offence; or
(*b*) expresses the wish to have the charge dealt with by a youth justice court.

Both sections 717 (2) of the *Criminal Code* and section 10 (2) of the *Youth Criminal Justice Act* state that a person can not be referred to an alternative measures program or youth extrajudicial sanctions program if they deny committing the offence or express the wish to have the matter dealt with in court.

Although the *Criminal Code* and the *Youth Criminal Justice Act* give legislative authority for alternative measures programs and extrajudicial sanctions programs, it is the responsibility of the provinces to develop and regulate these programs. In Saskatchewan, the Department of Corrections and Public Safety is responsible for programs for young offenders, while Saskatchewan Justice is responsible for adult programs.

Section 3: Policy Guidelines

This section includes the Ministerial Orders and policies that authorize the use of alternative measures and extrajudicial sanctions in Saskatchewan. These include the Saskatchewan Justice Alternative Measures Policy (2004), the Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy (2004), the federal Alternative and Extrajudicial Measures Policy and the Saskatchewan Environment Enforcement Bulletin – Alternative Measures (2004).

The Saskatchewan Justice Alternative Measures Policy (2004) applies to alternative measures programs for adults, while the Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy (2004) applies to extrajudicial sanctions programs for youths.

The federal Alternative and Extrajudicial Measures Policy guides the actions of federal prosecutors. The Saskatchewan Environment Enforcement Bulletin - Alternative Measures (2004) guides conservation officers who are considering referring an accused person to an alternative measures program.

Saskatchewan Justice Alternative Measures Policy (2004)

Minister of Justice
and Attorney General

SASKATCHEWAN

Legislative Building
Regina, Saskatchewan S4S 0B3

MINISTER'S ORDER

Section 717 of the *Criminal Code* (Canada) provides, in part, as follows:

> 717 (1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:
>
> (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;
> (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;
> (c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;
> (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
> (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
> (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
> (g) the prosecution of the offence is not in any way barred at law.

I, Frank Quennell, Q.C., Minister of Justice and Attorney General for the Province of Saskatchewan, pursuant to section 717 of the *Criminal Code* (Canada), do hereby authorize adult alternative measures programs which are consistent with the program criteria attached hereto as Schedule "A".

I do hereby further authorize the Deputy Minister of Justice and Deputy Attorney General for the Province of Saskatchewan as my delegate for the purpose of amending the program criteria set out in the attached Schedule "A" including with respect to its application to classes of cases or specific cases; for setting operating standards for adult alternative measures programs consistent with the program description authorized above; and for approving individual adult alternative measures programs.

Dated at the City of Regina, Saskatchewan, the 26 day of July, 2004.

Minister of Justice
and Attorney General

Acid-free Paper

SCHEDULE A

1. Purpose:

Alternative measures provide an alternative to the traditional court process for adults charged with offences set out in the *Criminal Code*.

These programs offer adults who are accused of committing a *Criminal Code* offence an opportunity to make reparation to victims and community within a structured, publicly accountable program that is sensitive to cultural diversity.

2. Authority:

2.1 Consistent with section 717 of the *Criminal Code*, Saskatchewan Justice provides operating standards for the approval of alternative measures programs.

2.2 Referrals are made pre-charge and post-charge upon review by a Crown prosecutor.

3. Eligibility Criteria:

Victim participation is encouraged, but not a prerequisite for program eligibility except in mediation. Victim participation is voluntary.

3.1 Offender:

- Adult;
- Sufficient evidence exists to support the charge;
- The adult is referred to the program by a Crown prosecutor, having assessed the circumstances to ensure that the referral is not barred by law or policy;
- The offender acknowledges responsibility for the behaviour;
- Diverted not more than twice in the last three years;
- No failed diversion in the last six months;
- No substantial record of similar offences or recent charges.

3.2 Offences to be excluded:

- Incident involving the use of or threatened use of a weapon;
- Violence against the person cases (adult or child), where the Crown elects to proceed by way of indictment;
- Child sexual abuse cases;
- Sexual assault cases, where the Crown elects to proceed by way of indictment;
- Perjury;
- Driving while disqualified;
- All *Criminal Code* driving offences where alcohol was a contributing factor;

- Any federal offences other than *Criminal Code**;
- Family violence cases.

*The availability of alternative measures respecting these offences is determined by the federal Department of Justice.

4. Exclusionary Criteria:

4.1 The offender refuses to participate.

4.2 Offence or offender is excluded according to the eligibility criteria.

4.3 The Crown prosecutor does not think that the offender or offence is suitable for the program.

4.4 The agency administering the program does not think the offender or the offence is suitable.

5. Program Options and Activities:

(Where available and accessible in a reasonable period of time):

- Restitution/compensation in cash or in kind;
- Personal service work for the victim;
- Community service work;
- Mediation (see attached policy);
- Donation to a charity;
- Referral to a specialized program (such as life skills, crime prevention, Stoplift);
- Referral for counseling or treatment (such as drug/alcohol, health, mental health, or social service agencies);
- Participation in Aboriginal cultural activities;
- Other reasonable agreements;
- Some combination of the above.

Mediation Programs

In addition to meeting the alternative measures program guidelines, mediation programs must demonstrate the following:

1. **Purpose:**

   Mediation is a particular type of program option. Victims and offenders are provided with an opportunity to meet and effect a reconciliation and reparation.

   Programs must involve victims and offenders through a process of mediation and reparation.

2. **Authority:**

   Mediators must have a combination of theoretical and practical training specific to criminal justice mediation as required by Dispute Resolution Office, Saskatchewan Justice.

3. **Victim Participation:**

   Victim participation is a prerequisite for eligibility in the program.

   Victim participation is strictly voluntary. Refusal by the victim to participate or to allow for a surrogate excludes mediation as an option for the offender.

   Special consideration is given in favor of cases where there is an ongoing relationship between the victim and the offender, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents.

4. **Eligibility Criteria:**

   As defined in the *Saskatchewan Justice Alternative Measures Policy (2004)*.

5. **Exclusionary Criteria:**

   Same as the criteria for alternative measures, with the addition of:
   - Refusal of the victim to participate or to be represented by a surrogate;
   - Mediator does not believe that mediation would be suitable.

Minister of Justice
and Attorney General

SASKATCHEWAN

Legislative Building
Regina, Saskatchewan S4S 0B3

MINISTER'S ORDER

Section 10 of the *Youth Criminal Justice Act* (Canada) provides in part, as follows:

> 10 (1) An extrajudicial sanction may be used to deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral mentioned in section 6, 7, or 8 because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.
>
> 10 (2) An extrajudicial sanction may be used only if:
>
> (a) it is part of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;
> (b) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society;
> (c) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subject to it;
> (d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
> (e) the young person accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed;
> (f) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and
> (g) the prosecution of the offence is not in any way barred at law.

I, Frank Quennell, Q.C., Minister of Justice and Attorney General for the Province of Saskatchewan, pursuant to section 10 of the *Youth Criminal Justice Act* (Canada), do hereby authorize youth extrajudicial sanctions programs which are consistent with the program criteria attached hereto as Schedule "A".

I do hereby further authorize the Deputy Minister of Justice and Deputy Attorney General for the Province of Saskatchewan as my delegate for the purpose of amending the program criteria as set out in the attached Schedule "A" including with respect to its application to classes of cases or specific cases; for setting general program standards for youth extrajudicial sanctions programs consistent with the program description authorized above; and for approving individual youth extrajudicial sanction programs.

Dated at the City of Regina, Saskatchewan, the 26 day of July, 2004.

Minister of Justice
and Attorney General

Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy (2004)

1. Purpose:

Extrajudicial sanctions provide an alternative to the traditional court process for young persons facing charges for offences set out in the *Criminal Code*.

These programs offer youth who are accused of committing a *Criminal Code* offence an opportunity to make reparation to victims and community within a structured, publicly accountable program that is sensitive to cultural diversity.

2. Authority:

1.1 Saskatchewan Justice approves youth extrajudicial sanctions programs.
1.2 Saskatchewan Corrections and Public Safety provides operating and monitoring standards for approved youth extrajudicial sanctions programs.
1.3 Referrals are pre-charge or post-charge upon review by a Crown prosecutor.

3. Eligibility Criteria:

Victim participation is encouraged, but not a prerequisite for program eligibility except in mediation. Victim participation is voluntary. With the approval of the victim, a surrogate may be used when appropriate.

3.1 Offender:

- Young person as defined by the *Youth Criminal Justice Act*;
- Sufficient evidence exists to support the charge;
- Prosecution is not barred at law;
- Young person is referred to the program by a Crown prosecutor, having assessed the circumstances to ensure that the referral is not barred by law or policy;
- Young person acknowledges responsibility for the behavior;
- Young person chooses to participate, having been advised of the right to counsel and having been given a reasonable opportunity to consult with counsel.

3.2 Offences to be excluded:

- Incidents involving the use of or threatened use of a weapon;
- Violence against the person cases (adult or child) where the Crown elects to proceed by way of indictment, including offences such as murder, attempted murder, or sexual assault;
- Child sexual abuse cases;
- Perjury;
- Driving while disqualified;
- All *Criminal Code* driving offences where alcohol or drugs were a contributing factor;

- Any federal offence other than *Criminal Code**;
- All family violence cases.

*The availability of youth extrajudicial sanctions respecting these offences is determined by the federal Department of Justice.

4. Exclusionary Criteria:

4.1 Youth refuses to participate;
4.2 Offence is excluded or the offender is excluded as a result of significant failure to complete previous extrajudicial sanctions, or the existence of other significant charges that call into question the appropriateness of extrajudicial sanctions;
4.3 Referral agent (police, Crown prosecutor) does not think that the offender or offence is suitable for the program;
4.4 Agency administering the program does not think the offender or the offence is suitable;
4.5 A youth extrajudicial sanctions program is not available for the area.

5. Program Options and Activities:

(Where available and accessible in a reasonable period of time):

- Restitution/compensation in cash or in kind;
- Personal service work for the victim;
- Community service work;
- Mediation (see attached policy);
- Family group conferences/community accountability conferences (see attached policy);
- Donation to a charity;
- Referral to a specialized program (such as life skills, crime prevention, Stoplift);
- Referral for counseling or treatment (such as drug/alcohol, health, mental health, or social services agencies);
- Participation in Aboriginal cultural activities;
- Other reasonable agreements;
- Some combination of the above.

Program options may be delivered, with approval, by a range of service providers including citizen volunteers operating under the auspices of a community justice committee, community-based organizations or persons in private practice.

Mediation Programs

Within the context of the *Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy* (2004), mediation programs adhere to the following guidelines:

1. **Purpose:**

   Mediation is a particular type of program option. Victims and offenders are provided with an opportunity to meet and effect a reconciliation and reparation.

   Programs must involve victims and offenders through a process of mediation and reparation. Where appropriate, and with the permission of victims, a surrogate may be used in the mediation process.

2. **Authority:**

   Mediators must have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Corrections and Public Safety.

3. **Victim Participation:**

   Victim participation is a prerequisite for eligibility in the program.

   Victim participation is voluntary. Refusal by the victim to participate or to allow for a surrogate excludes mediation as an option for the offender(s).

   Special consideration is given in favour of cases where there is an ongoing relationship between the victim and the offender, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents.

4. **Eligibility Criteria:**

   As defined in the *Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy* (2004).

5. **Exclusionary Criteria:**

   Same as the criteria for extrajudicial sanctions, with the addition of:
   - Refusal of the offender to participate;
   - Refusal of the victim to participate or to be represented by a surrogate;
   - Mediator does not believe that mediation would be suitable.

Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy (2004)

Family Group Conferences and Community Accountability Conferences

Within the context of the *Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy* (2004), family group conferences (alternatively known as community accountability conferences) adhere to the following guidelines:

1. **Purpose:**

   Family group conferences or community accountability conferences are a particular type of program option. Victims, offenders, their families and significant others (such as extended family members and community members who have an interest in the outcome or who are affected by the young person's conduct) are provided with an opportunity to meet and to address the material and emotional effects resulting from and related to the incident.

   Programs involve participants in a process of healing, reconciliation and consensus decision-making. They focus on condemning actions rather than the offender, and serve to reintegrate offenders into the community with the support of an informed community of care.

2. **Authority:**

   Family group conference coordinators must have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Corrections and Public Safety.

3. **Victim Participation:**

   Victim participation is a prerequisite for eligibility in the program. Victim participation is voluntary.

   Victims may be personally represented, appear with supporters, or, with their permission, be represented by a surrogate.

   Special consideration is given in favor of cases where there is an ongoing relationship between the victim and the offender, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents.

4. **Eligibility Criteria:**

   As defined in the *Saskatchewan Corrections and Public Safety Youth Extrajudicial Sanctions Policy* (2004).

5. Exclusionary Criteria:

Same as the criteria for extrajudicial sanctions, with the addition of:

- Refusal of the offender to participate;
- Refusal of the victim to participate or to be represented by a surrogate;
- The circumstances of the case are not appropriate for family group conferencing.

Saskatchewan Environment Enforcement Bulletin – Alternative Measures (2004)

Saskatchewan Environment Enforcement Bulletin – Alternative Measures (2004)

I. AUTHORITY

- *Youth Criminal Justice Act (Canada)*, Section 2 and Section 10
- *Criminal Code of Canada* Section 717
- Minister of Justice Order dated September 30, 1996
- Federal Minister of Justice Order dated August 1997

II. PURPOSE

To provide an alternative to traditional prosecution and/or court processes for offenders facing charges laid by conservation officers, **or to "extrajudicial measures" if the offender is a "young person."**

III. GENERAL APPLICATION

It is the duty of the Attorney General's agent (Crown Prosecutor) to determine the appropriateness of Alternative Measures. Giving consideration to an offender's age, character, history and rehabilitative prospects, a conservation officer may recommend that it would be appropriate to use measures alternative to traditional prosecution. These measures provide offenders an opportunity to effect reparation to victims and/or the community within structured, publicly accountable forums.

The Alternative Measures program is not intended to be available for every offender and every offence. Rather, it is an acknowledgement that in some cases, because of the nature and circumstances of the offence and the offender, the public interest would be better served by a resolution outside of the traditional criminal process. The objective of Alternative Measures programs is to have the offender accept responsibility for the offence without going through the formal court process. It is essential, therefore, that the offender takes responsibility for his actions.

IV. PROCEDURE

1. Investigate the offence following established investigative procedures. If possible, obtain a warned statement from the accused. Do not advise the accused that you are considering Alternative Measures, as this may jeopardize the admissibility of a warned statement.

2. When the investigation is complete and there is sufficient evidence to support a charge, examine the eligibility criteria to determine whether the accused qualifies for the Alternative Measures program. The program is generally aimed at offenders without substantial records of resource or environmental offences. Both the circumstances of the offender and the offence should be considered.

2.1 The Offender

- Acknowledgement of responsibility for behaviour;
- No substantial record or recent charges of resource or environmental offences;
- No failed diversion in the last 6 months.

2.2 The Offence

Existence of any of the following circumstances will preclude diversion:

- All hunting offences where alcohol was a contributing factor;
- Where the conduct demonstrated sophisticated planning (for example, the offence was part of an ongoing illegal enterprise);
- Offences involving the killing, possessing, capturing, injuring or trafficking in wild species at risk;
- Where the victim (if applicable) does not consent to Alternative Measures.

In addition to the factors outlined above, the case must satisfy the eligibility criteria established under the Saskatchewan Justice Diversion Program Policy (Appendix A) or, for federal offences other than Criminal Code, The Federal Guidelines for Alternative Measures (Appendix B).

3. Consult the local Crown Prosecutor. Referrals to the diversion program are made pre-charge or post-charge upon review by a Crown Prosecutor. If pre-charge, giving consideration to the statute of limitations period, the prosecutor will advise whether an information should be sworn at this time. The following diversion options may be available and should be considered:
    - Restitution/compensation in cash or in kind;
    - Personal service work for the victim;
    - Community service work (resource or environment related);
    - Donation to a charity (i.e. Sask Tip or other suitable natural resource related charity);
    - Referral to a specialized program (i.e. SAFE);
    - Aboriginal cultural activities;
    - Mediation;
    - Other reasonable agreements;
    - A combination of the above.

4. Interview the accused and advise him that the Crown is considering Alternative Measures. Explain the program, outlining the diversion options available to him (i.e. completion of a SAFE course).

5. The accused must fully and freely consent to participate in the Alternative Measures program. Before consenting, he must be advised of the right to be represented by counsel.

6. If the accused consents to participate, complete the Allegation And Agreement To Refer To Alternative Measures form (EB10-B-2004). Forward the form to the Crown Prosecutor for review and endorsement.

7. Upon receiving signed approval from the Prosecutor, the case may proceed to Alternative Measures. **Compliance Managers, or designated area Alternative Measures coordinators, and Investigating Officers will determine the appropriate diversion option.** This may include a community justice committee, Mediation Services (Saskatchewan Justice), an Alternative Measures Provider or simply an Alternative Measures Agreement (using the SE Alternative Measures Agreement form EB10-A-2003). *Note: If the accused is a member of a First Nation, the coordinator will consult with the appropriate Tribal Council Justice Committee (See Appendix D).

8. Upon completion of the Alternative Measures, the file will be referred to the investigating conservation officer. **Form EB10-A-2003, EB10-B-2004 and EB10-C-2003 should be completed and copies sent to the Enforcement Centre. In all instances where charges have been laid in a case, and the Alternative Measures have been completed successfully, a copy of the Report to Crown and others (EB10-C-2003) should be filed with the court the day the charge(s) are withdrawn.**

9. If the Alternative Measures process is unsuccessful, depending upon advice from the Crown Prosecutor, the case will normally proceed through the court system.

RECOMMENDED BY:

Original signed by
Bill Zimmer
Manager
Specialized Enforcement Unit

Date: November 8, 2004

APPROVED BY:

Original signed by
Dave Harvey
Director
Enforcement and Investigations Section

Date: November 8, 2004

ATTORNEY'S GENERAL ORDER

Section 717 of the *Criminal Code* (Canada) provides, in part, as follows:

> "717.(1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:
>
> (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council or a province;
> (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;
> (c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;
> (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
> (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
> (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
> (g) the prosecution of the offence is not in any way barred at law."

I, Anne McLellan, Minister of Justice and Attorney General of Canada, pursuant to section 717 of the *Criminal Code*, do hereby authorize adult alternative measures programs which are consistent with the policy criteria contained in the "Alternative Measures (Diversion)" policy in the Crown Counsel Policy Manual and Schedule "A" attached hereto.

I do hereby further authorize the Deputy Minister of Justice and Deputy Attorney General of Canada as my delegate for the purpose of amending the policy and ensuring the effective implementation of the policy.

Dated at the City of Ottawa, Ontario, this 22 day of August, 1997

Minister of Justice and Attorney General

14 ALTERNATIVE AND EXTRAJUDICIAL MEASURES

14.1 Introduction

Not every individual alleged to have committed an offence need be prosecuted. Section 717 of the *Criminal Code* recognizes that where it is not inconsistent with the protection of society, Crown counsel can exercise their discretion to deal with the individual by "alternative measures," (or "diversion," as it is sometimes known). In such circumstances, Crown counsel refers the offender to an individual or agency with the intention of reaching an agreement to deal with the offence outside the judicial process. In appropriate cases, alternative measures may provide greater benefit to the offender, the victim, and society than can the formal criminal process. Indeed, the fundamental principle underlying alternative measures is that criminal proceedings should be used with restraint and only when other less intrusive measures have failed or would be inappropriate. This allows the courts to devote their resources to addressing more serious crime.

The object of these alternative measures programs for adults is to have the offender accept responsibility for the offence without going to trial. Participation in an alternative measures program is voluntary; the offender cannot be forced into it. If the offender complies with the diversion agreement, the Crown relinquishes its right to prosecute the offender for the offence.

Diversion can occur before or after a charge is laid[1]. This policy generally applies after a charge has been laid, except in provinces where pre-charge screening takes place, where it will apply both pre-charge and post-charge. The policy applies to both adults and young offenders.

While many of the principles in this alternative measures policy are relevant to both adults and young persons, important differences exist between Alternative Measures for Adults and Extrajudicial Measures for young persons under the *Youth Criminal Justice Act*. Adult Alternative Measures do not apply to young persons. To distinguish between the options available to adults from those available to young persons, the terms "alternative measures" and "diversion" are used throughout this policy to refer to adult offenders; "extrajudicial measures" is used in association with young persons.

14.2 Statement of Alternative Measures Policy

14.2.1 General Principles

Diversion is not intended to be available for every offender and every offence. Rather, it is an acknowledgement that in some cases, because of the nature and circumstances of the offence and the offender, the public interest would be better served by a resolution outside of the traditional criminal process. Generally, it will be most suitable for younger adult offenders and those with no criminal record, who have committed minor offences.

14.2.2 Preconditions to Diversion

Where Crown counsel is considering exercising the discretion to divert an alleged offender, Crown counsel must be satisfied that the following preconditions have been met:

- the case meets the criteria in the "Decision to Prosecute" policy[2] (ss. 717(1)(f) and (g), *Criminal Code*);
- the offender has been advised of his or her right to counsel and is aware that he or she does not have to accept diversion (ss. 717(1)(c) and (d), *Criminal Code*);
- the offender is willing to acknowledge responsibility for his or her actions (s. 717(1)(e), *Criminal Code*);
- a program described in s. 717(1)(a) of the *Criminal Code* exists for which this particular offender would be eligible;
- appropriate consultation has been undertaken, where necessary, with victims, investigating authorities[3] or other interested parties, and diversion would be in the interests of society, the offender and the victim (s. 717(1)(b), *Criminal Code*).
- Crown counsel should note that the statutory pre-conditions to alternative measures for adults in s. 717 of the *Criminal Code* are virtually identical to the pre-conditions for the use of extrajudicial sanctions for young persons under s. 10(2) of the YCJA.

14.3 Guidelines for Application of Policy

14.3.1 The Circumstances of the Offender

The policy is aimed generally at offenders who have not violated the criminal law previously, and are unlikely to do so in the near future. Crown counsel should consider the following factors in assessing an offender's suitability:

- whether the offender has previously violated the criminal law (including convictions, discharges or diversions) and if so, the date and nature of the violations;
- the offender's remorse (including for example, whether the offender has agreed to fairly compensate any victim(s));
- whether the offender poses a risk to the community; and
- whether the offender is facing other charges.

14.3.2 The Nature of the Offence

As indicated above, the policy is directed at "minor" offences. "Minor" offences include offences that are objectively less serious, or potentially serious offences committed in a less serious way. The following factors are relevant in determining seriousness:

- whether the offence is summary or indictable;
- whether a minimum punishment is prescribed;
- whether the offence usually results in a sentence exceeding three months imprisonment ("imprisonment" includes a conditional sentence of imprisonment served in the community);
- the potential or actual harm to the victims(s) or society in general.

Crown counsel must also ascertain whether the offence is the subject of other policies, which would affect the decision to divert, e.g. "Spousal Violence"[4], "Aboriginal Law Issues"[5], "Impaired Driving Cases"[6], "Firearms and Other Offensive Weapons".[7] These policies should also be considered regarding the use of extrajudicial measures under the YCJA.

14.3.3 The Circumstances of the Offence

Existence of any of the following circumstances will preclude diversion:

- the offence involved the use of, or threatened use of, violence reasonably likely to result in harm that is more than merely transient or trifling in nature;
- a weapon was used or threatened to be used in the commission of the offence;
- the offence affected the sexual integrity of a person;
- the offence had a serious impact upon the victim (physical, psychological or financial);
- the conduct demonstrated sophisticated planning (for example, the offence was part of an ongoing criminal enterprise);
- a person trafficked in a controlled substance or possessed the substance for the purposes of trafficking, in or near a school, on or near school grounds or in or near any public place usually frequented by persons under the age of 18 years;
- a person trafficked in a controlled substance, or possessed the substance for the purpose of trafficking, to a person under the age of 18 years;
- a person used a person under the age of 18 years to commit a drug offence; and
- the motivation for committing a drug offence was primarily profit[8].

14.4 Successful Completion of the Alternative Measures Program

If the offender successfully completes the diversion program, the criminal charge shall be withdrawn or stayed and not re-instituted. If the criminal charge was already withdrawn or stayed before the offender was diverted, the charge shall not be re-instituted. If charges were not laid before the offender was diverted, Crown counsel shall not institute or proceed with those charges.

14.5 Failure to Complete the Alternative Measures Program

If the offender fails to complete the program, criminal proceedings may be instituted or reinstituted. However, before doing so, Crown counsel should determine why the program was not completed and assess the appropriateness of instituting or re-instituting proceedings in light of those facts. The decision to institute or re-institute proceedings will require the authorization of the FPS Director or Regional Director.

14.6 Extrajudicial Measures Under the YCJA

14.6.1 Introduction

The *Youth Criminal Justice Act* (YCJA) came into force on April 1, 2003. It replaced the *Young Offenders Act* (YOA). A major objective of the YCJA is to reduce the use of the youth court through the increased use of extrajudicial measures. Parliament was concerned about the over-use of the youth court for less serious charges and concluded

that many charges could be dealt with more quickly and effectively through extrajudicial measures. "Extrajudicial measures" are defined in s. 2 of the Act as measures other than judicial proceedings used to deal with a young person alleged to have committed an offence. Extrajudicial measures include "extrajudicial sanctions," which are defined in s. 2 of the Act to be those set out in s. 10 of the Act.

The YCJA is significantly different from the YOA regarding non-court responses to alleged offences by young persons. The YOA permitted the use of alternative measures but provided little direction as to the appropriate use of alternative measures, the types of measures and their objectives. In contrast, the YCJA provides principles to guide decisions regarding the use of extrajudicial measures, sets out objectives for extrajudicial measures, and identifies specific types of extrajudicial measures.

Crown counsel have a key role in ensuring that Parliament achieves its objective of reducing the use of the youth court, where appropriate. Counsel should be mindful of their prosecutorial duties in light of the requirements and considerations in Part 1 of the YCJA (sections 4-12).

14.6.2 Extrajudicial Measures: Options for Crown counsel

If a pre-charge screening program is in place in the jurisdiction, Crown counsel can advise the police that they can exercise one of the options available to them under s. 6 of the Act: take no further action; issue a warning or police caution; refer the young person to a community program or agency, with the consent of the young person; or refer the young person to an extrajudicial sanctions program.

If a pre-charge screening program is not in place, Crown counsel have the following options once the police forward the file to the Crown:

14.6.2.1 Withdrawal of the charge

Crown counsel may determine that, although there is sufficient evidence to proceed with a prosecution of the charge, withdrawal of the charge is appropriate. It may be clear, for example, that after considering the principles and objectives in sections 3, 4 and 5 of the Act, and the factors related to the seriousness of the offence, discussed below, the process of apprehension, detention and charging has been a sufficient response from the youth criminal justice system, and no further action is required. Crown counsel should also refer in this regard to the factors listed in the Decision to Prosecute policy.[9]

14.6.2.2 Referral to a community program or agency

A referral to a community program or agency, with the consent of the young person, may be appropriate in cases where it is clear that the young person needs assistance with a problem that may have contributed to the commission of the offence. Rather than prosecuting the young person for a minor offence, Crown counsel may conclude that the matter can be addressed more appropriately outside of the criminal justice system and a referral can be made to the appropriate program or agency. For example, a young person who has committed a minor offence may require help from a substance abuse program. While the Act does not expressly codify this referral power for prosecutors, as it does for the police, it is within the Crown's discretion to make such referrals. Prior to making such

referrals, however, Crown counsel may wish to consult individuals and experts who have relevant information about existing community programs.

14.6.2.3 Crown caution

Section 8 of the Act states that the Attorney General may establish a program authorizing prosecutors to administer cautions to young persons instead of starting or continuing judicial proceedings under the YCJA. The Attorney General of Canada formally established a program of Crown cautions for young persons in April 2003. The Attorney General's order states that federal prosecutors are to consider the use of Crown cautions for young persons in relation to minor offences. The order is attached as Appendix C.*

A Crown caution is a formal warning from the prosecutor that, although there are sufficient grounds to prosecute the offence, the prosecutor will not be proceeding with the charge. The caution advises the young person to avoid involvement in crime in the future.

While a Crown caution can be provided verbally to the young person by the prosecutor, a Crown caution letter should also be provided to the young person. A notice to the parent or guardian that the young person has been cautioned, as well as a copy of the caution letter, should also be provided to the parent or guardian of the young person wherever possible. Once Crown counsel has confirmed that the young person has received the caution, and has documented the file accordingly, the charge or charges should be withdrawn or stayed, depending on the circumstances. See Appendix D for the format of a Crown caution letter.*

14.6.2.4 Extrajudicial sanctions

Extrajudicial sanctions are the most serious response within the range of extrajudicial measures. Unlike the other types of extrajudicial measures, an extrajudicial sanction requires the young person to accept responsibility for the act that forms the basis of the offence, and to comply with the terms and conditions of the sanction. Failure to comply can result in the prosecution of the offence. Also, unlike other types of extrajudicial measures, the history of a young person's involvement in extrajudicial sanctions can be raised during the young person's sentencing for a subsequent offence in certain circumstances.

An extrajudicial sanction can be used only if the young person cannot be adequately dealt with by a warning, caution or referral under sections 6, 7, or 8, because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances. The additional conditions that must be satisfied under s. 10(2) of the YCJA before an extrajudicial sanction can be used are virtually identical to the conditions that had to be satisfied under s. 4(1) of the YOA before an alternative measure could be used.

* Please note that this document does not contain the Appendices from the federal Alternatives and Extrajudicial Measures Policy. For this material, please see the Justice Canada website at http://canada.justice.gc.ca/en/dept/pub/fps/fpd/ch14.html#14_9_4

By virtue of s.165(5) of the YCJA, any program of alternative measures authorized under the YOA was deemed, as of the coming into force of s. 165(5) of the YCJA, to be a program of extrajudicial sanctions authorized for the purposes of the YCJA. Like alternative measures under the YOA, extrajudicial sanctions programs under the YCJA include letters of apology, essays, anti-shoplifting educational programs, victim-offender reconciliation programs, personal service to the victim, and community service.

14.6.3 General Principles for the Use of Extrajudicial Measures

In addition to the principles set out in Section 3 of the YCJA, which apply to the entire Act, Crown counsel must be mindful of the following principles in Section 4 when considering whether to use an extrajudicial measure and in determining which extrajudicial measure option to use:

- Extrajudicial measures are often the most appropriate and effective way to address youth crime;
- Extrajudicial measures allow for effective and timely interventions focused on correcting offending behaviour; and
- Extrajudicial measures should be used if they would be adequate to hold the young person accountable.

Crown counsel should also remain cognizant of the principle in s. 4(d) of the YCJA, which states that extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour.

Determining whether an extrajudicial measure would be adequate to hold the young person accountable requires Crown counsel to determine whether an extrajudicial measure can provide meaningful consequences that are proportionate to the seriousness of the offence and to the degree of responsibility of the young person and that promote the young person's rehabilitation. Additional factors to consider in making this determination as discussed below at 14.6.5 and 14.6.6.

Under s. 4 (c), extrajudicial measures are presumed to be adequate to hold a young person accountable if the young person has committed a non-violent offence and has not previously been found guilty of an offence. This presumption is a strong direction from Parliament that Crown counsel are expected to use extrajudicial measures rather than the court to deal with non-violent offenders who have not previously been found guilty of an offence. However, Crown counsel may find that there are circumstances related to the seriousness of the offence that rebut the presumption in some cases.

Further, under s. 4 (d), extrajudicial measures may be used even if the young person has previously been dealt with by extrajudicial measures or has previously been found guilty of an offence. The use of another extrajudicial measure in these circumstances does not mean that the previous extrajudicial measure was a failure, or that another extrajudicial measure would not be adequate to hold the young person accountable for the current offence.

Section 5 of the YCJA further provides that extrajudicial measures should be designed to:

- Provide an effective and timely response to offending behaviour;
- Encourage young persons to acknowledge and repair the harm caused to the victim and the community;
- Encourage the involvement of families and the community;
- Provide an opportunity for victims to participate and to receive reparation;
- Respect the rights and freedoms of young persons; and
- Be proportionate to the seriousness of the offence.

14.6.4 Determining Whether an Extrajudicial Measure Would Be Adequate to Hold a Young Person Accountable

In determining whether any of the following four extrajudicial measures are adequate to hold a young person accountable (withdrawal of the charge; referral to a community program; Crown caution; or extrajudicial sanction), Crown counsel must consider sections 3, 4 and 5, and also assess: (a) the seriousness of the offence; and (b) the nature and number of previous offences or any other aggravating circumstances.

14.6.5 Factors related to the seriousness of the offence, and the history of previous offences or any other aggravating circumstances

- whether the offence is summary or indictable;
- whether the offence involved the use of, or threatened use of, violence reasonably likely to result in harm that is more than transient or trifling in nature. An offence involving bodily harm is not necessarily too serious to be dealt with by extrajudicial measures. However, the more serious the harm, the less likely that it should be dealt with by extrajudicial measures.
- the potential or actual harm or damage to the victim (physical, psychological or financial) and/or to society;
- whether the incident affected the sexual integrity of a person;
- whether a weapon was used or threatened to be used in the commission of the offence. As youth cases have demonstrated (water balloons and spit-balls have been found to be weapons), it is important to consider the actual danger represented by the weapon.
- whether the offence is a drug offence. (If so, see below at 14.6.6 for specific factors to consider in relation to Crown cautions and extrajudicial sanctions.)
- If the offence is a drug offence, the nature and deleterious consequences of the drugs involved should be considered (Again, see 14.6.6 for specific drug offence considerations and the possible use of extrajudicial measures.)

- if the drug trafficking or possession of the drug for the purpose of trafficking occurred in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of eighteen years old, this should be considered an aggravating factor ;[10]
- whether the offence is a property offence. If so, did the young person intentionally cause or attempt to cause substantial property damage or loss? Should the young person have reasonably foreseen that substantial property damage would be caused by the offence?
- whether the offence is an administration of justice offence, such as breach of probation. If so, would the non-compliance (e.g., failure to attend school; violation of curfew) have been an offence outside the context of a probation order? If not, it should be considered less serious and more likely to be dealt with appropriately through extrajudicial measures or through a review of the original sentence to determine whether the conditions should be changed.
- the role of the young person in the incident. For example, if the young person was the leader who planned and directed the offence, then his/her degree of responsibility is greater. However, this factor is secondary to the seriousness of the offence.
- whether the young person was a victim in the commission of the offence (e.g., a sexually exploited juvenile prostitute; a young person committing a drug offence who is being directed or exploited by an adult drug dealer). If so, it is more likely that an extrajudicial measure should be used.
- whether the young person has a history of committing offences. If so, what is the nature and number of previous offences? Although a history of offences may indicate that a more serious consequence is required to hold the young person accountable, this factor is secondary to the seriousness of the current offence.
- whether the young person has already displayed remorse (e.g., through voluntary reparation to the victim or to the community) or agreed to do so.
- If the young person were to proceed through the court system, what is the likelihood that the sentence would be more severe than what is available through extrajudicial measures? If the sentence is expected to be less severe, Crown counsel should consider whether proceeding to court would be an effective use of Crown and judicial time and resources.

14.6.6 Choosing the Appropriate Extrajudicial Measure

In addition to the principles and objectives in sections 3, 4 and 5 of the Act and the factors outlined in section 14.6.5 above, specific considerations apply to Crown cautions and to extrajudicial sanctions. These considerations are discussed below.

14.6.6.1 Crown cautions: specific considerations

The choice between using a Crown caution or an extrajudicial sanction depends on several factors. As stated in s. 10(1) of the YCJA, a sanction may be used to deal with a young person alleged to have committed an offence only if the young person cannot be dealt with by a warning, caution or referral in sections 6, 7 or 8 because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances. Crown counsel should determine the seriousness of the offence by considering the factors discussed above at 14.6.5. The less serious the offence, the more likely it is that a Crown caution should be used. The more serious the offence, the more likely it is that an extrajudicial sanction should be used.

A Crown caution should not be used for offences in which the young person intentionally caused or attempted to cause bodily harm or should have reasonably foreseen that bodily harm would be caused by the offence.

Crown cautions should be adequate to hold a young person accountable for a minor drug offence.

However, a Crown caution is unlikely to be adequate to hold a young person accountable for the following drug offences:

- possession of large amounts of marijuana or hashish;
- possession of cocaine, ecstasy or heroin;
- trafficking in a controlled substance, or possession of the controlled substance for the purpose of trafficking.

In certain circumstances, some of these drug offences could be dealt with by an extrajudicial sanction.

14.6.6.2 Extrajudicial sanctions: specific considerations

There is no limit to the number of times that a young person may be dealt with through extrajudicial sanctions.

If the Crown determines that a less serious extrajudicial measure is inappropriate, Crown counsel should still consider whether an extrajudicial sanction would be adequate to hold the young person accountable for his or her offending behaviour. Crown counsel must also remain cognizant of the principle that an extrajudicial measure is presumed adequate to hold a young person accountable if the young person has committed a non-violent offence and has not previously been found guilty of an offence. It is important to bear in mind, however, that presumptions are rebuttable. In applying the factors in 14.6.5 and the relevant principles under the YCJA, Crown counsel will sometimes conclude that a sanction is not appropriate to hold the young person accountable in the circumstances.

When Crown counsel imposes a sanction on a young person, the young person's file should be documented accordingly.

Extrajudicial sanctions can be used to deal with some drug offences that are too serious to be dealt with by a Crown caution. However, the following drug offences and circumstances are unlikely to be appropriate for extrajudicial sanctions:

- possession of large amounts of marijuana or hashish, or drugs such as cocaine, heroin or ecstasy;
- using another person more than two years younger than the young person alleged to have committed the offence to commit or assist in the commission of a drug offence;
- trafficking in a controlled substance, or possession of the substance for the purpose of trafficking (an exception may arise where the young person shares a very small quantity of the substance with a peer for little or no consideration).

A young person's refusal to consent to, or failure to follow through on, an extrajudicial measure regarding substance abuse treatment should not be interpreted as an unwillingness to participate in extrajudicial measures in general, or as an indication that an extrajudicial measure would not be adequate to hold the young person accountable for the offence. The refusal or failure could be a factor in choosing a particular measure but it should not be considered a bar to all extrajudicial measures.

14.7 The Canadian Environmental Protection Act, 1999

The Canadian Environmental Protection Act, 1999, (CEPA) contains special provisions for the use of alternative measures in the environmental prosecution context. The Department of the Environment has developed a program of alternative measures which has been authorized by the Attorney General pursuant to s. 296(1)(a) of the CEPA, 1999[11]. Section 296(1)(d) of the CEPA, 1999 sets out five factors counsel must consider in determining whether alternative measures are appropriate.

Footnotes

1 Investigative agencies also "divert" alleged offenders by exercising their discretion not to lay charges. This policy deals only with situations in which Crown counsel play a role in the diversion decision.
2 Part V, Chapter 15.
3 Where government departments have compliance programs for regulatory offences, diversion will usually be considered within the context of the program. Crown counsel should bear in mind that many offenders referred for prosecution for having committed regulatory offences will have already been considered inappropriate for participation in a compliance program.
4 Part VI, Chapter 28.
5 Part VI, Chapter 25.
6 Part VI, Chapter 27.
7 Part VI, Chapter 31.
8 In unusual circumstances, diversion may be considered despite the presence of this factor. However, authorization must be obtained from the Federal Prosecution Service Director or Regional Director.
9 Part V, Chapter 15.

10 This factor should be applied with particular care in the case of young persons since it is clearly more aggravating for an adult trafficker to attend a school for the purpose of selling drugs to youths than for a young person to sell drugs to his peers at school.
11 Pursuant to Part V, Chapter 16, "Decisions Made by, and on Behalf of, the Attorney General," the authorization of the program is made by the Assistant Deputy Attorney General, Criminal Law. The program is described in a document entitled Guidelines for Negotiating and Monitoring Environmental Protection Alternative Agreements under the Canadian Environmental Protections Act.